

(22,729.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 653.

S. T. GRAY AND ROBERT BRADY, APPELLANTS,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, AND
ROMUALDO DURAN, THE BOARD OF COUNTY COM-
MISSIONERS OF LINCOLN COUNTY, TERRITORY OF
NEW MEXICO, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW
MEXICO.

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1 In the Supreme Court of the United States of America,
October Term, A. D. 1911.

No. —.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from Supreme Court, Territory of New Mexico.

Transcript of Record.

T. B. Catron, Attorney for Appellants.

2 Be it remembered, that heretofore, on the fifteenth day of August, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico a transcript of record in a certain cause therein entitled, S. T. Gray and Robert Brady appellants vs. Robert H. Taylor, et al., and Numbered 1350 which said transcript of record was and is in part as follows to wit:—

In the Supreme Court of the Territory of New Mexico, January
Term, A. D. 1910.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court Lincoln County.

Transcript of Record.

T. B. Catron & Geo. B. Barber, Attorneys for Appellants.
Hewitt & Hudspeth, Attorneys for Appellees.

Be it remembered that in the District Court for the County of Lincoln, in the Sixth Judicial District Court for the Territory of New Mexico, in the following entitled cause, to-wit:

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO DURAN,
 the Board of County Commissioners of Lincoln County, Territory
 of New Mexico, and T. W. Watson, Treasurer and ex-Officio Col-
 lector of Lincoln County, Territory of New Mexico, and J. G.
 Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

Bill of Complaint for Injunction.

3 the following proceedings were had, to-wit:

On the 22nd day of January, 1910, the plaintiffs in said cause filed in the District Court for the County of Lincoln, a complaint, which said complaint was afterwards amended and the same re-written in the said amended complaint, in full, and is therefore not here inserted, but in the amended complaint it is referred to as containing the same.

To which said complaint the defendants, on the 21st day of February 1910, filed their answer, which said answer is all incorporated in and is a part of the answer by them made to the plaintiff's amended and supplemental complaint thereafter, by leave of the Court, filed in said cause, and for that reason the same is not here copied or set out in full, but the said answer to the said amended and supplemental complaint is here referred to as containing the said answer in this paragraph referred to as filed on the 21st day of February, 1910.

And afterwards, towit, on the 4th day of April A. D., 1910, there was filed by the plaintiffs in said cause an amended and supplemental complaint which is in the words and figures following to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO DURAN,
 the Board of County Commissioners of Lincoln County, Territory
 of New Mexico, and T. W. Watson, Treasurer and ex-Officio Col-
 lector of Lincoln County, Territory of New Mexico, and J. G.
 Riggle, Probate Clerk of Lincoln County, and Ben Betzel, De-
 fendants.

To the Honorable Alford W. Cooley, Associate Justice of the Supreme Court of the Territory of New Mexico in and for the County of Lincoln, in said Territory, for the trial of causes arising under the laws of the Territory:

4 S. T. Gray and Robert Brady, the plaintiffs in the above entitled cause, residents of the County of Lincoln, in the Territory of

New Mexico, by leave of the Court first had, show that on or about the month of January, last they filed their original complaint in this court against Robert H. Taylor, Charles W. Wingfield and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico; and T. W. Watson, Treasurer and Ex-officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, stating in substance, among other things, as follows:

"S. T. Gray and Robert Brady, plaintiffs and residents of the county of Lincoln, Territory of New Mexico, bring this their bill of complaint against Robert H. Taylor, Charles E. Wingfield, and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico; and T. W. Watson, Treasurer and Ex-Officio Collector of Lincoln County, Territory of New Mexico; and J. G. Riggle Probate Clerk of Lincoln County, New Mexico, defendants, and thereupon your plaintiffs complain and say:—

"That Robert H. Taylor, Charles W. Wingfield and Romaldo Duran are duly elected, qualified and acting Board of County Commissioners of Lincoln County, New Mexico; that T. W. Watson, is the duly elected qualified and acting Treasurer and Ex-officio Collector of said County, and that J. G. Riggle is the duly elected, qualified and acting Probate Clerk of said Lincoln County.

"That the plaintiffs are tax paying residents of the county of Lincoln and have a manifest and substantial interest in the matters and things alleged in this complaint.

"That, therefore, to-wit, on the ninth day of July 1909 at a meeting held by the defendant, The Board of County Commissioners of said Lincoln County, Robert H. Taylor, Chairman of the said Board, combining and confederating with his co-commissioner Charles W.

Wingfield, to order an election held in said county, to vote on
5 the proposition to remove the county seat of said county from
the town of Lincoln to the town of Carrizozo, and said Taylor
and said Wingfield constituting a quorum of said Board, did then
and there illegally and wrongfully make an order calling such an
election and ordering the same to be held on the seventeenth day of
August, 1909, which said pretended election was held on said day
without any registration of the voters of Lincoln County, and at said
election a great number of persons voted who were not qualified elec-
tors of the county of Lincoln, and a great amount of money was
fraudulently used to carry said pretended election in favor of the
town of Carrizozo, and on account of such fraudulent doings a ma-
jority vote was cast at said pretended election in favor of the town
of Carrizozo.

"The plaintiffs further say that all the foregoing actings and doings were done under a pretended act of the Territorial Legislative Assembly of the Territory of New Mexico styled Chapter 80, and printed on pages 217-218-219 of the 1909 Acts of said Legislative Assembly, and Act entitled "An Act relating to the changing of county seats" Council Bill No. 86; Law by limitation, March 18, 1909.

"The plaintiffs aver and charge the truth to be that the county

of Lincoln is possessed of public buildings consisting of a court house and jail, situate at the county seat, the town of Lincoln, the original construction of which cost said county more than the sum of thirty thousand dollars, and that the public records of said county disclose this fact; and that before an election to change the county seat could be legally ordered held under the above mentioned pretended Council Bill No. 86, a deposit of the sum of forty thousand dollars must be made with the Treasurer of said county as a condition precedent to the ordering of such election to vote on the proposition of changing the county seat; and that no person or persons have deposited with said Treasurer the sum of forty thousand dollars nor any other sum of money to build a court house and jail at the town of Carrizozo.

"The plaintiffs further say that the defendants have given out
and threatened the sale of bonds of Lincoln County, in the
6 sum of twenty-eight thousand dollars, for the purpose of
raising money to build a court house and jail buildings at
the town of Carrizozo, and the plaintiffs believe that they will carry
their said threat into execution, and thereby do these plaintiffs and
other tax payers of Lincoln County an irreparable injury by creating
an unlawful debt and obligation against the said county of Lincoln,
unless they the said defendants are at once restrained by your honor's
writ of injunction from so doing. And the plaintiffs further say that
said threatened bond issue and sale is close at hand and that the
plaintiffs have not the time to obtain affidavits and documentary
proof to file with and in support of this complaint, and they ask the
court for leave to hereafter file such affidavits and documentary proof
in support of this bill of complaint.

"The plaintiffs further say that they have been reliably informed, therefore, they believe the truth to be that said pretended enactment, styled Council Bill No. 86, has no force of law, and is an illegal enactment; and never should have been printed into the session laws of this Territory, because the so called and styled enactment in the course of its supposed passage, through the Legislature, was not signed by the Speaker of the House nor the President of the Council that attempted to make such signing by its presiding officers mandatory upon them, and that the Supreme Court of the United States, has passed upon this question and has decided that such signing by presiding officers was mandatory upon such presiding officers, to pass, and give the force of law to an enactment; and the Plaintiffs are further reliably informed, therefore, they state the truth to be that in consequence of such so called enactment styled Council Bill No. 86, having been wrongfully printed as aforesaid into the said session laws of this Territory, a resolution has been introduced before the lower House of the Congress of the United States to annul and disapprove said so called enactment.

"Wherefore, the plaintiffs pray for a writ of injunction to restrain
defendants in their several respective official capacities as
7 county officers, from issuing, signing, sealing and endorsing,
and negotiating the sale of Lincoln County Bonds, for the
sum of twenty-eight thousand dollars, or for any other sum of

money, to raise money to construct a court house and jail at the town of Carrizozo, or in any manner permitting such to be done until the further order of this court.

"And that upon the final hearing of this case, a decree be entered in effect that the legal county seat of Lincoln County is located at the town of Lincoln, New Mexico, and that the plaintiffs have such other and further relief as to your honor may seem meet and just."

The plaintiffs further show that the said defendants, Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico; and T. W. Watson, Treasurer . . . Ex-Officio Collector of Lincoln County, Territory of New Mexico; and J. G. Riggle, Probate Clerk of Lincoln County, appeared and filed answer to the said complaint, and these plaintiffs replied to the same.

Plaintiffs further show, by way of supplemental, leave of the court having — first granted thereof, that since the said complaint was filed in said court the plaintiffs applied to the Honorable Associate Justice assigned to that district to grant the injunction prayed for in said complaint; that the said Judge or Court declined, at the time, to grant said injunction on the ground as they are informed and believe that there was no imperative necessity for immediate action in that regard, and that the Board of County Commissioners and Treasurer and Clerk of said county would not execute, certify and negotiate or dispose of said bonds while there was another action pending to enjoin the election referred to in the complaint herein and while this action was pending and undetermined for the purpose of enjoining the issue of the bonds and otherwise as therein stated; and further on the ground that the judge of the Court desired to inform

himself, if possible, as to what action would be taken by Congress on the resolution introduced there to nullify and disapprove the Act of the Legislative Assembly under which the Board of County Commissioners and other defendants had taken their action in reference to the removal of said county seat. That so being informed and believing the truth to be, the said cause was put at issue, an examiner was appointed to take the evidence as did also the defendants. The defendants believing from the information received that the said Board of County Commissioners would not issue said bonds and negotiate the same or receive the money therefor until this action was determined and the other action disposed of in regard to holding said election, and much more forcibly and strongly did they believe that no steps would be taken by the said Board of County Commissioners or other officers of said county towards contracting for the erection of a court house and jail at Carrizozo or any proceedings undertaken towards the erection thereof; but they state the fact to be that notwithstanding their said information and belief and the assurance which they thereby had, which they relied upon, the said Board of County Commissioners, acting by a majority of its members only, and the said Treasurer and the Clerk of said Board proceeded to issue the said bonds to the amount of twenty-eight thousand dollars of the said County of Lincoln with interest coupons attached thereto, representing the interest payable on the

said bonds, all of which said bonds and coupons were signed, sealed, executed, certified and registered by them pretending to do so in accordance with forms and provisions of law, but as plaintiffs allege in violation of law.

And plaintiffs further allege that notwithstanding the information and assurances they had received as aforesaid as to the reason as to why the court, at the time it was requested, declined temporarily to issue said injunction, the said defendants in said original complaint proceeded to negotiate, sell and dispose of said bonds and receive into the Treasury of said County the proceeds thereof, amounting, as they are informed and believe, to about twenty-eight thousand dollars in cash, and also, that, notwithstanding said

9 information and *and* assurances, and notwithstanding the pendency of this action, the said defendants, the Board of County Commissioners, have pretended to enter into a contract with one Ben Betshel, a resident of the County of Curry in the Territory of New Mexico, for the erection of a court house and jail for said County at Carrizozo in said County, which place these plaintiffs are advised and so allege the fact to be, is not the lawful county seat of said county, and said buildings cannot lawfully be erected at said place and the moneys of said county cannot lawfully be expended therefor, for the reason that no lawful election to vote upon the removal of said county seat was ever lawfully and properly ordered, there never having been a legal petition in any way or composed of a number of legal voters in said county, that is, qualified electors of said county equal in number to at least one half of the legal votes cast at the last preceding general election in said county presented to said Board of County Commissioners asking for the removal of the county seat of said county to some other designated place, although it is true that a petition of other character was presented to said Board of County Commissioners having the names of a sufficient number of persons attached thereto to equal one-half of the number of legal votes cast in said county at the last preceding general election; but these plaintiffs allege that all of the names to said petition were not genuine; that a large number of them were not signed to the petition by the persons of that name themselves, but were without authority signed by some other person or persons; that a large number of the said names were fictitious and represented no persons who were bona fide citizens of said county; that a large number of said names were obtained by means of fraud, deception and misrepresentations made to citizens of the said county, that the petition was for another and a different purpose than that which was expressed upon its face; that the said petition was in the English Language and a large number of the said signers thereof were ignorant of the English language and only spoke the Spanish language, and a large number

10 of them were unable to read and write and unable to read said petition for themselves, and to those people who were ignorant of the English language and could not read and write and whose names were secured to the said petition it was falsely and fraudulently represented to them that the said petition was for some other purpose than that of asking for the holding of an election for

the removal of the county seat to some other place than that where it then was, and also for some other purpose than that of asking for the removal of said county seat to some other place, so that all of said persons amounting to several hundred who could not understand the English language and could not read and write, were deceived by the false representations and fraud aforesaid, and thereby induced to sign by the false representations and fraud aforesaid, and thereby induced to sign or allow their names to be signed to said petition against their will and wish, they not being in favor of the removal of said county seat to some other place.

Plaintiffs are further informed that a large number of the signers of said petition were not actual bona fide residents of the said county and qualified electors therein at the time they signed said petition and that many of the persons whose names were signed to said petition were, as they are informed and believe, induced to sign the same by means of corruption and the payment to them of a consideration therefor; that if the parties who it is herein alleged signed said petition illegally and wrongfully or improperly, or whose names were placed thereto without their authority, or whose names were fictitious and not genuine, or who in ignorance of its true purpose were induced to sign the same or allowed their names to be signed thereto on account of false and fraudulent representations as to the purpose thereof, were eliminated from the said petition, the number of signers to said petition would fall very far short of one-half of said legal votes, in number, cast at the last general election in said county.

They further allege, by way of amendment, that a pretended election was held in said county, as alleged in the original complaint herein, but that it was in violation of law because no legal

11 petition had been presented to the Board of County Commissioners, as aforesaid shown, authorizing the holding of any such election; that when said election was held, as alleged in the original complaint, it was held without any registration of the voters having been made who were qualified to vote at said election as required by law, and for that reason was illegal, invalid and void; that at said election, so pretended to be held, a majority of the lawfully qualified electors of said county did not vote for the removal of the county seat to Carrizozo, but a majority of them voted otherwise; that although it appeared by the returns that a majority of the votes cast at said pretended election was in favor of the removal of said county seat to Carrizozo, yet, a very large number of voters who voted at said election and particularly those who voted in favor of the removal of the said county seat to Carrizozo, were illegal, fraudulent, fictitious votes, not cast by qualified electors of said county not by bona fide residents and qualified voters of said county; that a very large number of the names which are represented by said returns to have been voted by persons at said election were fictitious names and names which did not represent any person and much less any bona fide resident and qualified elector of said county; that money was fraudulently used with a large number of them as plaintiffs are informed and believe, to bribe electors and qualified voters

of said county and many who were not qualified voters of said county to vote at said election, and particularly to vote for the removal of said county seat to Carrizozo.

By way of further supplemental allegations to said complaint, plaintiffs allege that, prior to the issuance of the bonds in question and subsequent to the holding of said pretended election, said Board of County Commissioners of said County has held several pretended meetings thereof at the town of Carrizozo without anyone, except themselves, so far as plaintiffs are informed and believe, having any notice of such meetings or without giving any notice thereof and without having their Clerk present at one or more of said

12 meetings; that at least one of said meetings was held at said

Carrizozo and an attempt made to sign and seal said bonds, but they had no clerk or seal present and said meeting was adjourned without completing said work, and thereupon said Board of County Commissioners adjourned and went to the said town of Lincoln, the County seat of said county, where said clerk had his office and kept the seal of said county and where the treasurer kept his office, and without holding or opening any session of said Board at the said town of Lincoln, but in the night-time they got together and pretended to order and direct the said Probate Clerk of said county and the Treasurer of the said county to sign said bonds without giving any notice of such meeting or without the public having any means or notice thereof or an opportunity to be present and protest against said action; that said meeting, if any such was held, was held not during business hours and not one wherein the public might have notice thereof.

And plaintiffs are further informed and believe that there is no court house and was not at the time of those meetings in Carrizozo any court house in said town of Carrizozo in which said Board of County Commissioners was authorized to meet and hold the sessions of said Board, as plaintiffs are advised, informed and believe the fact to be.

By way of further supplemental allegation to said complaint, plaintiffs allege that they are informed and believe that the said Ben Betznel, with whom said alleged contract has been made by the said Board of County Commissioners to erect said court house and jail, is about to proceed with the work upon the same and to the erection thereof and he gives out and threatens that he intends to proceed expeditiously to erect the said court house and jail at Carrizozo at the expense of said county, in accordance with the alleged contract which has been made with him for that purpose with the Board of County Commissioners of said County.

Plaintiffs are not informed as to the exact contents of said contract and are therefore unable to state the same, and have not the possession of the original or any copy of said contract and are

13 therefore unable to attach the same to this complaint; but

plaintiffs further aver that the said Board of County Commissioners and a majority of the members thereof and the said Treasurer of said County gave out, threaten and declare that they will make payments to the said contractor Ben Betznel, for his work, labor and material as he proceeds with the same under said contract

in the construction of said court house and jail at Carrizozo, and that payment for the same will be made out of the moneys received and now in the Treasury of said County from the proceeds of the said twenty-eight thousand dollars in bonds.

Plaintiffs allege, as they are advised and believe, that the county seat of the said County of Lincoln has never been lawfully located or established at Carrizozo, and that the expenditure of the said moneys in the erection of the court house and jail at said Carrizozo would be illegal and invalid, and a total loss of the same to the said county of Lincoln and would thereby become a heavy burden upon the taxpayers of said county to pay the same and the interest accruing thereon. They greatly fear that if not restrained and prevented by an injunction issuing out of this court at once to that end, the said Ben Betzel will proceed and continue with the erection of said court house and jail and that the said Board of County Commissioners and said Treasurer, T. W. Watson, of said County of Lincoln, will pay out to the said Ben Betzel from the said moneys the cost of the construction of said court house and jail according to the terms of said contract between them, and that thereby there will be entailed upon said county of Lincoln and the said tax payers thereof great and irreparable loss and damage; that the said County Commissioners are each under bond of only five thousand dollars for the faithful discharge of the duty of that office as members of the Board of County Commissioners of said County, which is not sufficient to secure and protect the said county and the tax payers of said county from the loss and damage which will accrue to them by reason of the erection of the said court house and jail at Carrizozo and the expenditures of said money arising from the proceeds of said bonds in payment therefor.

Inasmuch therefore, as the plaintiffs are without plain, adequate and complete remedy by the rules of common law in the premises and are only reliable in equity, they apply to your honor for equitable relief and pray that you will grant to them and caused to be issued, immediately, an injunction, directed to the said defendants in the original complaint, enjoining and restraining them from paying out any moneys in the treasury of the said county to the said Ben Betzel, or any one else towards the erection or for the erection of any buildings for a court house and jail at the said town of Carrizozo in said county. That the said Ben Betzel be made a party defendant to said suit, and that an injunction also be issued and granted against him restraining and enjoining him from erecting any building for a court house and jail in said county of Lincoln at Carrizozo in said County under the said alleged contract with him or under any pretext whatever and that upon a final hearing of this cause injunction so prayed for may be made perpetual, and that plaintiffs may have such other and further relief as the nature of the case requires and to the court may appear to be meet and proper.

(S'g'd)

G. B. BARBER AND
T. B. CATRON,
Attorneys for Plaintiffs.

15 TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Before me the undersigned, personally appeared S. T. Gray and Robert Brady, plaintiffs in the above entitled cause, and being by me duly sworn, upon their oaths, each respectively says that he has heard read over and understands the contents of the foregoing complaint and that the same is true of his own knowledge, except as to the matters and things therein stated on information and belief, and as to those each of them believe it to be true.

(Sgd.)

[SEAL.]

(Sgd.)

S. T. BRADY.

ROBT BRADY.

Subscribed and sworn to before me this 30th day of March, A. D. 1910.

(Sgd.)

JOHN M. PENFIELD,
Notary Public.

My Commission expires the 6th day of May, 1912.

P And afterwards, towit, on the 3rd day of March, 1910, the said defendants, Romaldo Duran, and J. G. Riggle, filed an answer in said cause, which said answer is in the words and figures following to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO Martinez, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer, and ex Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

Now at this day comes Romualdo Duran, member of the Board of County Commissioners for Lincoln County, Territory of New Mexico; and J. G. Riggle, Probate Clerk of Lincoln County, Territory of New Mexico, defendants in the above entitled cause, and for answer to the plaintiffs' complaint filed herein, say:

That they admit plaintiffs are tax paying residents of the County of Lincoln, as alleged in plaintiffs' bill of complaint.

These defendants further answering say, that they have in person made a thorough examination of the public records of Lincoln County, and that they admit that the county of Lincoln is now possessed of public buildings consisting of a court house and jail

situate at the county-seat the town of Lincoln, the original construction of which said building, cost said county as shown by its public records more than the sum of thirty thousand dollars.

These defendants answering further, say that they admit that no person or persons have deposited the sum of forty thousand dollars with the Treasurer of Lincoln County, to build a court house and jail buildings at the town of Carrizozo.

These defendants further answering say that, as to all other matters and things alleged against them in plaintiffs' said bill of complaint, not heretofore and herein answered, they have no knowledge upon which to make answer, therefore they leave such matters and things to be proven by the plaintiffs in this cause.

These defendants further say that they have not authorized any person to answer for them in this cause, and if answer has been made, or plea filed for them, they disown and disapprove of same, and they claim the right to file and stand upon this answer made by themselves in person.

Wherefore these defendants pray to go hence with their costs most wrongfully sustained.

17 (Signed) ROMUALDO DURAN,
Member of the Board of County Commissioners,
Lincoln County, New Mexico;
 Signed) J. G. RIGGLE,
Probate Clerk of Lincoln County, New Mexico,
Defendants.

TERRITORY OF NEW MEXICO,
Lincoln County, ss:

Before me the undersigned authority, personally appeared Romualdo Duran, and J. G. Riggle, to me personally known to be the identical persons, who hold the respective county offices above designated under each of their respective names, and they being by me first duly sworn, did say that they that they caused the foregoing answer to be prepared for them that; that they have read over and fully understand the same signed by them as defendants; that said answer is true to their own knowledge, except such matters and things therein stated on information and belief, and as to such matters and things they believe it to be true.

(Sgd.) ROMUALDO DURAN.
 (Sgd.) J. G. RIGGLE.

Subscribed and sworn to before me this 25th day of February, 1910. My commission expires May 8th, 1912.

(Sgd.) JOHN M. PENFIELD,
 [SEAL.] *Notary Public.*

And afterwards on towit, on the 2nd day of March, A. D. 1910 the said plaintiffs filed in said cause in said court theyr reply to the answer of defendants in said cause, which is in words and figures following towit:

In the District Court, Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, ROMUALDO DURAN
et als., Defendants.

Plaintiffs' Reply to Defendants' Answer.

The plaintiff- replying to the answer (sworn to by Robert H. Taylor,) of the defendants herein say:
18 The plaintiffs' bill of complaint is true, and the defendants' answer, as set forth, is not true, and this they are ready to prove; Wherefore plaintiffs ask judgment as in their complaint prayed for.

(Sgd.)

S. T. GRA-,
ROBERT BRADY, Plaintiffs.
GEO. B. BARBER,
Attorney for Plaintiffs.

TERRITORY OF NEW MEXICO
County of Lincoln, ss:

Robert Brady, one of the above named plaintiffs, being first duly sworn, says that he has read the foregoing reply to defendants' answer, and understands the contents of same, and that said reply is true to his own knowledge.

(Sgd.)

ROBT. BRADY.

Subscribed and sworn to before me this 26th day of February, 1910. My Commission expires May 6th, 1912.

(Sgd.)
[SEAL.]

JOHN M. PENFIELD,
Notary Public.

And thereafter, to-wit, on the 4th day of April, A. D. 1910, an order was made by the Court in said cause which is in words and figures as follows, to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD and ROMUALDO Duran, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson Treasurer, and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. J. Riggle, Probate Clerk of Lincoln County, New Mexico, Defendants.

On reading and filing the petition of the plaintiffs S. T. Gray and Robert Brady, in the above entitled cause, which was duly verified on the 23rd day of March, 1910, before the Hon. John R. McFie Associate Justice of the Supreme Court of the Territory of
19 New Mexico and said petition coming on for hearing this the 4th day of April, A. D. 1910, before the undersigned Associate Justice of the Supreme Court of New Mexico, at the Court House of Guadalupe County, in Santa Rosa, there being present both parties represented by their attorneys, and after hearing counsel pro and con in reference to the prayers of the said petition, and after hearing the proposed *the proposed* amended and supplemental complaint for the filing of which leave is prayed in said petition and the court being fully advised in the premises orders, adjudges and decrees that leave be and hereby is given for the said plaintiffs to file said amended and supplemental complaint as prayed for in the said petition, and that the said Ben Betzel be made a party defendant to said amended and supplemental complaint and the said plaintiff having immediately in accordance with said leave filed said amended and supplemental complaint, and the court having considered the same, after hearing the said defendants, except the said Ben Betzel, and being fully advised in the premises does hereby order, adjudge and decree that a writ of injunction issue out of the District Court in and for the County of Lincoln in the Territory of New Mexico directed to the said defendants in the said amended and supplemental complaint restraining and enjoining them until the determination of this cause or until the further order of the court in the premises from taking any steps or proceedings whatever towards, or for the erection of a court house and jail or either of them, at the town of Carrizozo in said county of Lincoln, and from paying out any of the monéys of the said county for such purpose, And that said injunction be directed to and operate upon each of the said defendants individually, as well as the whole of them.

It is further adjudged and decreed that a summons issue immediately and be served as soon as practicable upon the said Betzel, as a party defendant in said cause in accordance with the practice of this court in such cases, requiring and summoning him to enter

his appearance in said cause and make answer to the same as a defendant therein, and that said cause shall be put at issue within all possible speed. That upon said cause being at issue the 20 said plaintiffs be and they hereby are granted and given five days' time in which to introduce any further evidence in support of their amended and supplemental complaints, or in rebuttal of the evidence already taken in said cause.

It is further ordered, adjudged and decreed that the evidence which has already been taken on behalf of the plaintiffs and defendants in said cause stand as evidence in said cause the same as if it had been taken under the amended and supplemental complaint.

Dated this 4th day of April, A. D. 1910.

(Sgd.)

ALFORD W. COOLEY,
*Associate Justice of the Supreme Court
of the Territory of New Mexico.*

And afterwards towit, on the 8th day of April, 1910, the defendants in said cause filed their answer in said court to the said amended and supplemental complaint, which is in words and figures following, towit:

TERRITORY OF NEW MEXICO
County of Lincoln, ss:

In the District Court.

Civil Action. No. 1928.

S. T. GRAY et al.

vs.

BOARD OF COUNTY COMMISSIONERS et al., Defendants.

Answer.

The defendants, by Hewitt & Hudspeth, duly authorized by order of the Court as associate counsel for the original defendants, and appearing for the defendant, Ben Betshel, come and in answer to the supplemental complaint filed herein by the plaintiffs, says:

1. They deny that the county of Lincoln, New Mexico, is possessed of public buildings consisting of court house and jail situated at the town of Lincoln, the original construction of which cost said county more than thirty thousand dollars.

21 2. Defendants deny upon information and belief, that Council Bill No. 86 was unsigned by the speaker of the House and President of the Council of the Legislative Assembly of the Territory of New Mexico of 1909 which enacted said law.

3. They deny, on information and belief, that any resolution has been adopted by either House of Congress annull-ing or disapproving said Council Bill No. 86.

4. They deny, on information and belief, that any of the names signed to the petition for the election for the removal of the county

seat of said county from Lincoln to Carrizozo were so signed by other than persons who were legal voters of said county; they deny, on information and belief, that any fraud, deception or misrepresentations were used in procuring signatures to said petition, as to the object and purpose of the same.

4. They deny, on information and belief, that the number of bona fide residents and legal voters of said county signing said petition was less than one-half the votes cast at the next preceding general election in said county of Lincoln.

6. They deny, on information and belief, that any of the votes cast for Carrizozo, on the 17th day of August, 1909, for the removal of said county seat, were illegal, fraudulent or fictitious; they likewise deny that any of the votes cast for Carrizozo were so cast by persons other than bona fide residents and qualified voters of said county; they deny upon information and belief, that money was used to bribe electors and qualified voters of said county to vote for the removal of said county seat to Carrizozo.

(Sgd.)

HEWITT & HUDSPETH,
Attorneys for Defendants.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Robert H. Taylor, one of the defendants in the above entitled cause, being first duly sworn, says that he has read the foregoing answer of the defendants to the supplemental complaint of the plaintiffs and knows the contents thereof and that the same is true to his knowledge except as to those matters therein stated on information and belief and as to those matters he believes them to be true.

(Sgd.)

ROBT. H. TAYLOR.

Subscribed and sworn to before me this the 7th day of April, 1910.

[SEAL.]

(Sgd.)

EDGAR H. B. CHEW,
Notary Public.

My Commission expires April 5, 1913.

And afterwards towit, on the 13th day of April, 1910, the plaintiffs in said cause filed their reply to defendants answer to supplemental complaint in said court, which is in the words and figures following towit:

In the District Court of the Sixth Judicial District of the Territory
of New Mexico within and for the County of Lincoln.

#1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, ROMADLO DURAN
et al., Defendants.

Plaintiffs' Reply to Defendants' Answer to Supplemental Complaint.

The plaintiffs, replying to the supplemental answer of defendants herein, as sworn by Robert H. Taylor, say:

That plaintiffs' amended supplemental complaint is true, and the defendants' answer to said supplemental complaint, as set forth, is not true, and this they are ready to prove.

Wherefore, plaintiffs ask judgment as in their amended and supplemental complaint prayed for.

(Sgd.)

(Sgd.)
"

T. B. CATRON,
G. B. BARBER,
Attorneys for Plaintiffs.
S. T. GRAY,
ROBERT BRADY,
Plaintiffs.

TERITORY OF NEW MEXICO,
County of Lincoln, ss:

Robert Brady, one of the above named plaintiffs being first duly sworn, says that he has read the foregoing reply to defendants' answer to plaintiffs' amended and supplemental complaint and understands the contents of same and that said reply is true to his own knowledge.

(Sgd.)

ROBERT BRADY.

Sworn to and subscribed to before me this 13th day of April 1910.

[SEAL.] (Sgd.)

J. G. RIGLE.

And afterwards, to-wit on the 4th day of April, 1910, there was issued out of the said court a writ of injunction in said cause which is in the words and figures following, to-wit:

The Territory of New Mexico to R. H. Taylor, C. W. Wingfield, and R. Duran, Commissioners of Lincoln County; T. W. Watson, Treasurer; J. G. Riggle, Probate Clerk, and Ben Betzhol, Greeting:

Whereas, S. T. Gray and Robert Brady, have filed their certain Bill in Chancery in our District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the county of Lincoln against you, the said R. H. Taylor, C. W. Wingfield, and R. Duran, Commissioners of Lincoln County, T. W. Watson, Treasurer, J. G.

Riggle Probate Clerk and Ben Betzel, your agents, employés, servants, attorneys and counselors, defendants, to be relieved touching the matters therein complained of, and which bill is still there pending.

We, therefore, in consideration of the premises and of the particular matters in said bill set forth do strictly enjoin and command you the said R. H. Taylor, C. W. Wingfield, and R. Duran, Commissioners of Lincoln County, T. W. Watson, Treasurer, J. G. Rigle, Probate Clerk, and Ben Betzel, your agents, employees, servants, attorneys and counsellors and all and every the persons before mentioned, and each and every one of you, under the penalty of the law thence ensuing, that you and every one of you, do absolutely desist and refrain from taking any steps or proceedings whatever towards or for the erection of a court house and jail or either of them at the town of Carrizozo in said county of Lincoln and from paying out any of the moneys of the said county for such purpose, said injunction being directed to and operative upon each of the said defendants, individually, as well as the whole of them, until the
24 further order of this court.

Witness, the Hon. Alford W. Cooley, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Sixth Judicial District Court thereof, and the seal of the said Court this the 4th day of April, A. D., 1910.

[SEAL.] (Sgd.) CHAS. P. DOWNS, *Clerk.*

Endorsed thereon; as follows:

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

This is to certify that I received this writ of injunction on the 4th day of April, 1910, and that I served the same the same day on Ben Betzel one of the defendant named therein, at said County and Territory, by delivering to the said Ben Betzel a copy of this writ, certified under the hand of the Clerk and the seal of the Sixth Judicial District Court of the Territory of New Mexico.

Dated April 4th, 1910.

(Sgd.) CHARLES A. STEVENS, *Sheriff,*
By LEO OSWALD, *Deputy Sheriff.*

Service and Return \$1.50.

Paid.

LEO OSWALD, *Dep.*

And afterwards, to-wit on the 2nd day of March, A. D., 1910, there was filed with the clerk of said Court in said cause a motion for the appointment of a special master which is in the words and figures following towit:—

In the District Court of the Sixth Judicial District of the Territory
of New Mexico with and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.
ROBERT H. TAYLOR, CHARLES W. WINGFIELD, ROMALDO DURAN et al.,
Defendants.

Now come the plaintiffs in the above styled and numbered cause,
by their attorney of record, and show to the court now here, that said
cause is now at issue upon plaintiffs' bill of complaint, defendants'
answer thereto, and plaintiffs' reply to defendants' answer; Where-
fore the plaintiffs now move the court for appointment by your
Honor, of a Special Master in Chancery, to take the testimony
25 in said cause, and report the same to the Court with all con-
venient speed.

(Sgd.)

GEO. B. BARBER,
Attorney for Plf's.

To Measrs. Hewitt & Hudspect, Associate Counsel for Defendants,
White Oaks, N. M.:

Please take notice that I will bring the above motion on for hear-
ing and determination, before the Judge of the Sixth Judicial Dis-
trict Court of the Territory, at his Chambers in the town of Alamo-
gordo N. M. on the fifth day of March, 1910, or as soon thereafter as
a hearing can be had.

(Sgd.)

GEO. B. BARBER,
Attorney for Plaintiffs, Lincoln, New Mexico.

And afterwards, to wit, on the 5th day og March, A. D., 1910,
an order appointing a special Master, in said cause was made and
filed, with the Clerk of said Court therein, which is in words and
figures following to-wit:—

In the Sixth Judicial District Court of the Territory of New Mexico
in and for Lincoln County.

No. 1928.

S. T. GRAY et al.
vs.
THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY et al.,
Defendants.

This cause coming on to be heard on the application of plaintiff
for the appointment of a Special Master herein, and the Court hav-
ing considered said application, does order that William F. A. Girke,
Esq. of Lincoln County, be and he is hereby appointed Examiner to

take such testimony as may be submitted to him on behalf of the plaintiffs and the defendants, and report the same to the Court within thirty days from his receipt of this order.

It is further ordered that the plaintiffs have fifteen days in which to submit their testimony in chief; that the defendants shall have ten days thereafter, wherein to submit their testimony in defense and the plaintiffs five days for rebuttal.

Done at Chambers at Alamogordo, in said District this 5th day of March, 1910.

(Sgd.)

ALFORD W. COOLEY, Judge.

26 Thereafter on the 16th day of April, A. D., 1910, the said Special Master filed in the Office of the Clerk of the Court in said cause the testimony taken by him, which will be hereafter set out in full.

And thereafter, the court, upon the consideration of the said evidence, rendered the following opinion in said cause, which is in words and figures as follows, towit:—

TERRITORY OF NEW MEXICO,
County of Lincoln, et al.

In the District Court.

Civil Action No. 1928.

S. T. GRAY et al.

vs.

THE BOARD OF COUNTY COMMISSIONERS et al.

Opinion.

The validity of the Act of the Legislative Assembly, authorizing elections for changing county seats, is attacked, for the reason that the enrolled bill, now on file in the office of the Secretary of the Territory, does not have upon it the signatures of the presiding officers of each branch of the legislature.

The journals of each house show the passage of the Act, as well as do the endorsements of the Chief Clerks of each house, and the message of the Governor, to the effect that he had allowed the Act to become law by limitation.

The signature of the presiding officers of each house, are required only by the rules adopted by each house, not joint rules but separate regulations of both houses for the conduct of business therein. There is no law of the Legislature nor Act of Congress controlling the method of the authentication of bills passed by the Legislative Assembly of New Mexico.

The mere showing that the Act as deposited in the Secretary's office fails to show compliance with a rule of each house as to authentication in the place of the journals of each house, in the face of

27 the message of the Governor, the endorsements of the Chief clerks of each branch of the legislature to the effect that the bill was passed by the legislature, is not sufficient to justify the holding that the law is invalid.

If it were not so, every law on the statute books in this Territory, might be nullified by an interested person having access to the files of the Territorial Secretary's office, removing the signature of the speaker of the House and President of the Council.

Cottrell vs. State, 9 Nebrs. 125; Leavenworth Co. vs. Higenbothen, 17 Kansas, 74; Taylor vs. Wilson, 17 Nebr. 88; McDonald vs. State, 80 Wis. 407; In Re Ryan, 80 Wis. 414.

II. It is claimed by the plaintiffs that the evidence before the Court establishes the fact that the cost of the original construction of the court house and jail in Lincoln, New Mexico, amounted to \$31,187.09.

The first item of \$15,000.00 expended in the purchase of a court house in 1880, included 120 acres of land, out of which several tracts, the acreage of which is not definitely defined, were reserved? It is impossible for the court to say that the buildings cost \$15,000.00 or half of it.

Included also in this amount are several items, for instance, \$1,500.00 for roofing done in 1892, and 1901. It is asserted by counsel for plaintiffs that these items should be classed as original construction, for they say the work included ceilings for the court rooms and county officers, but the record shows that these amounts were paid, for: "roofing court house" page 54 and "court house and jail repairs" pages 56 and 7. There is also an item of \$534.10 paid for metallic cases for Clerk's office, which should be classed as office furniture.

The testimony taken before the referee leaves in doubt whether the sum of \$8,000.00, as claimed by plaintiffs, was expended in the construction of the jail, or only \$4,000.00; while the record contains a contract for the buolding and furnishing of the jail of over

28 \$6,000.00 yet only \$4,000.00 of warrants were actually issued on that account and some \$700.00 for plastering and other extra work done in the jail.

It was incumbent on the plaintiffs, for the purpose of this hearing, to establish by a preponderance of the evidence that the original construction of the court house and jail in Lincoln cost the county more than \$30,000.00, and this they have failed to do.

III. The complaint also alleges, fraud and misrepresentation in procuring signatures to the petition to the county Commissioners calling for the county seat election, also that the election was called without registration, and further that there was fraud in the conduct of the election. While it was only shown that about sixty persons were induced by fraud and misrepresentation to sign the petition, leaving more than the requisite number of bona fide signatures, and while it was shown that a registration could not be had under the law calling for the election, and that the general registration law does not apply to special elections of this kind, and while only one vote was shown to have been fraudulently cast, and that

in favor of retaining the county seat in the town of Lincoln, yet I am of the opinion that these questions are none of them to be raised by a suit of this kind.

The overwhelming authority seems to be, to the effect, that a Court of equity cannot inquire into the legality of a county seat election, in the absence of any statutory authority, or injoin the removal of a county seat or the carrying the result of such election into effect upon the complaint of a tax payer, although such complaint alleges fraud, and for that reason I believe the court was without jurisdiction in this case, and that the law being valid, the other allegations set up in the complaint should have been striken. See 10 Am. Eng. Wncty. of Law, 2nd Edition, 816; Parmeter vs. Burne, 35 Pac. 586; Hipp v. Charlevoix Co., 62 Mich. 456; and other cases cited.

(Sgd.)

MERRITT C. MECHEM, *Judge.*

29 And thereafter on the said 9th day of June, A. D., 1910, the said Court filed and entered final judgment in said cause, which is in the words and figures following to-wit:—

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

In the District Court.

Civil Action No. 1928.

S. T. GRAY et al.
vs.

THE BOARD OF COUNTY COMMISSIONERS et al.

This cause coming on to be heard for final hearing on this the 6th day of June, A. D., 1910, and the Court after hearing the testimony in this cause and the argument of counsel, and being fully advised in the premises,

It is by the Court ordered, adjudged and decreed that the injunction heretofore issued in this cause be, and the same is hereby dissolved, and that the plaintiff's complaint herein be dismissed at their costs.

(Sgd.)

MERRITT C. MECHEM,
Associate Justice, Judge, etc.

And thereafter, on the 13th day of July, 1910, the said plaintiffs filed in the said court their motion for an Appeal to the Supreme Court of the Territory of New Mexico which is in the words and figures following, towit:—

In the District Court of the Sixth Judicial District of the Territory
of New Mexico within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.

ROBERT H. TAYLOR, —— WHITE, alias SALLIE WHITE, Successor in
Office to Charles W. Wingfield, Deceased, and Romaldo Duran,
the Board of County Commissioners of Lincoln County, Territory
of New Mexico, and T. W. Watson, Treasurer and ex-Officio Col-
lector of Lincoln County, Territory of New Mexico, and J. G.
Riggle, Probate Clerk of Lincoln County, New Mexico, Defend-
ants.

Now come the plaintiffs in the above styled cause by T.
30 B. Catron, and C. B. Barber, their attorneys of record, and
show to the court now here, that said plaintiffs are aggrieved
by the decision of the Court rendered against them, in said cause, by
Judge Merritt C. Mechem, at his Chambers in the town of Socorro,
N. M. on the sixth day of June A. D., 1910, and that said plaintiffs
desire to appeal from said decision to the Supreme Court of the Ter-
ritory of New Mexico.

Wherefore the said plaintiffs now move the court to grant them an
appeal from the decision of the court rendered as aforesaid, to the Su-
preme Court of the Territory of New Mexico.

(Sgd.)
(Sgd.)

T. B. CATRON.
G. B. BARBER.

To Hewitt & Hudspeth, Attorneys for Defendants, White Oaks,
N. M.:

Please take notice that on account of there being no presiding
Judge of the 6th Judicial District, now present in this Territory,
we will call up for hearing and determination, the foregoing motion,
before Judge Mechem, at his Chambers in the City of Santa Fe,
N. M. on the 21st day of July, 1910, or as soon thereafter as a hear-
ing can be obtained.

Dated Lincoln, N. M. July 9th, 1910.

(Sgd.)
(Sgd.)

G. B. BARBER,
T. B. CATRON,
Attorneys for Plaintiffs.

And thereafter, on the 20th day of July, 1910, the Court granted
said motion and allowed said appeal to the Supreme Court, which
is in the words and figures following to-wit:

In the District Court of the Sixth Judicial District of the Territory
of New Mexico Within and for the County of Lincoln.

No. 1928.

S. T. GRAY and ROBERT BRADY, Plaintiffs,
vs.

ROBERT H. TAYLOR, —— WHITE, alias SALLIE WHITE, Successor in
Office of Charles W. Wingfield, Deceased, and Romaldo Duran;
the Board of County Commissioners of Lincoln County, Territory
of New Mexico, and T. W. Watson, Treasurer and ex-
Officio Collector of Lincoln County, New Mexico; and J. G.
Riggle, Probate Clerk of Lincoln County, New Mexico, De-
fendants.

This cause coming on to be heard this 20th day of July, A. D.
1910, upon plaintiffs' motion filed herein praying for an appeal to be
granted plaintiffs in this cause from the decision of the Court ren-
dered herein on the 6th day of June, A. D., 1910, to the Supreme
Court of the Territory of New Mexico, and the Court having consid-
ered said motion and being fully advised in the premises doth grant
said appeal as prayed for in said motion. Defendants by their at-
torneys of record having consented to this appeal, and being present
at the hearing.

Done at Chambers, in the City of Santa Fe, on the 20th day of
July, A. D., 1910.

(Sgd.)

MERRITT C. MECHEM, Judge, etc.

And afterwards on towit; on the 18th day of August, A. D., 1910
there was filed in the office of the Clerk of the Supreme Court of the
Territory of New Mexico, an assignment of errors in the above enti-
tled cause, which said assignment of errors was and is in the follow-
ing words and figures towit:—

In the Supreme Court of the Territory of New Mexico, January
Term, A. D. 1910.

S. T. GRAY and ROBERT BRADY, Plaintiffs and Appellants,
vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO DURAN,
the Board of County Commissioners of Lincoln County, Ter-
ritory of New Mexico, and T. W. Watson, Treasurer and ex-Officio
Collector of Lincoln County, Territory of New Mexico, and J. G.
Riggle, Probate Clerk of Lincoln County, and Ben Batzel, De-
fendants and Appellees.

Assignment of Errors.

1. The Court erred in not finding that Council Bill No. 86 had
not been lawfully enacted.
2. In not finding that the alleged election had been legally
held.

3. In not finding that the alleged Chapter 80 of the laws of 1900 was either special or local in contravention of the Springer Act, and null and void.

4. In not finding that there was no evidence that the enrolled Council Bill No. 86, claimed to be Chapter 80 of the laws of 1909, had not been signed by the Speaker of the House and the President of the Council, and therefore had not become a law.

5. In not finding that Council Bill No. 86 never became a law, because it was never approved by the Governor.

5½. The Court erred in not finding that there is no evidence that Council Bill No. 86 was presented to the Governor three full days before the session adjourned so as to make it become a law under the Governor's signature.

6. The court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County equal to one-half of the votes cast at the last preceding general election asking that the county seat of Lincoln County be changed to Carrizozo, and that therefore the said election was illegal.

7. The Court erred in not finding that the petition acted on by the Board of County Commissioners, in regard to the election, was not according to law, nor as provided by law.

7½. The Court erred in not finding that the petition which was presented to the Board was not such a petition as the law provided should be made, but was different therefrom, and was one calculated to deceive and mislead the signers thereof.

8. The Court erred in not finding that the ballots which were directed to be voted were calculated to deceive and mislead the voters and cause them to vote in favor of Carrizozo instead of against it.

9. The Court erred in not finding that the ballot which was required by law and by order of the County Board to be voted was void for want of definiteness and clearness to the voters sufficiently to appraise them of their rights and how they should vote.

33 10. The Court erred in not finding that the ballot, which was required to be voted, was one calculated to induce votes to favor Carrizozo rather than oppose it, and that under it a voter could not understand his right or the effect of his vote if he wished to vote against the proposition.

11. The Court erred in not finding that fraud was practiced in securing signatures to the petition to such an extent as to infect and render vicious and illegal the whole petition and make it void.

12. The Court erred in not finding that there was such an amount of illegal votes cast at such election as to taint the whole election with fraud and render it void.

13. The Court erred in not finding that the election was void for want of any registration of the names of the legal voters and because the same was held without any registration, as registration was required by law for all elections.

14. The Court erred in not finding that the County of Lincoln had, at the time said alleged election was held, a court house and jail,

the original construction of which cost more than \$30,000.00 as shown by the record of the Board of County Commissioners.

15. The Court erred in not finding that said election was void because the sum of \$40,000.00 was not deposited, as required by law to be used in the construction of a court house and jail at Carrizozo if a majority of the qualified voters were in favor of that place in said election.

16. The Court erred in rendering judgment in favor of defendants and against the plaintiffs.

17. The Court erred in dismissing the complaint and in not rendering judgment in favor of plaintiffs in accordance with the prayer of their complaint.

18. The Court erred in divers and sundry other respects as
34 will appear from an inspection of the record and proceedings
in said cause.

(S'g'd)

T. B. CATRON,
GEO. B. BARBER,
Attorneys for Appellants.

And Afterwards, on to-wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesday after the first Monday in January, A. D., 1910, on the thirteenth day of the said regular term, the same being Friday, August 26th A. D., 1910 the following among other proceedings were had and entered of record to wit:

No. 1350.

S. T. GRAY et al., Appellants,

vs.

ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause coming on for hearing upon the transcript of record, assignment of errors and briefs of counsel, is argued by T. B. Catron, Esq., for Appellants, and John Y. Hewitt, Esq., and A. H. Hudspeth, Esq. for Appellees and submitted to the court, and the court not being sufficiently advised in the premises takes the same under advisement.

And Afterwards, on to-wit, on the twenty-fourth day of the said regular term, the same being Thursday, September 1st, A. D., 1910, the following among other proceedings were had and entered of record, to wit:

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

35 Appeal from District Court, Lincoln County.

This cause having been argued by counsel, submitted to and taken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the premises announces its decision by Associate Justice Baker, Associate Justice Abbott concurring, Chief Justice Pope and Associate Justice Wright concurring especially, affirming the judgment of the court below, for reasons stated in the opinion of the court on file: It is therefore considered and adjudged by the court that the judgment of the District Court in and for the County of Lincoln, whence this cause came into this court, be and the same hereby is affirmed, and that in accordance therewith, it is considered and adjudged by the court that the injunction heretofore issued in this cause be, and the same hereby is dissolved, and that the plaintiffs' complaint herein be dismissed at their costs.

And Afterwards, on to wit, on the tenth day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a motion for a rehearing and to set aside the judgment, which said motion to set aside the Judgment and Grant a Rehearing, was and is in the following words and figures following to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

Come the appellants in the above entitled cause and move the court to set aside the judgment entered in said cause and grant 36 a rehearing therein for the following reasons.

(1) The court gave a wrong interpretation to the effect of the Journals — and House, although the journals which were not legally established by any lawful proof so as to authorize them to be introduced in evidence, yet as introduced in evidence they may have shown the passage of the act, but nowhere did they show that the act

was presented to the Governor at any time, much less more than three days before they adjourned.

(2) The court in holding that a journal may be judicially noticed overlooked the fact that that referred to the original journal and not an unauthorized printed copy, and that what is meant by judicial notice of the journal, is, that the original when offered in evidence would not require any proof to establish it and does not refer to the facts contained in the journal independent of the introduction of the journal in evidence. There is no law requiring a journal to be kept, as in Wisconsin, and in the absence of any law or what is equivalent to a law requiring a journal to be kept, it would be necessary to prove that the journal offered in evidence was the original or an authorized copy of it, which was not shown.

(3) The court erred in not holding that the message of the Governor, sent on the last day of the session to the Council, stating that he had allowed the act to become a law by limitation, did not establish the fact that the bill had been presented to him more than three days before the adjournment of the Legislature; and also in holding that because other bills or acts showed that they, as printed, had become a law by limitations; that such fact justified the court in assuming that the Governor had received the act more than three days prior to his message, when it does not appear affirmatively, anywhere, that he did receive it three days before the time of adjournment, and it does appear affirmatively that he did not approve or sign it. The court evidently failed to consider all the facts and law bearing on said point.

(4) The court _____ an equal division of the court, the meaning of the petition upon which the Board of County Commissioners acted in calling the election. The petition did not ask, as the law required, that the county seat be removed, but referred to the suggestion that probably had proposed that it be removed, and the petition merely asked that the proposition be submitted to the voters. Those who signed the petition may have done so with a view of cutting off any election for ten years and keeping it at its then located place believing that they had a majority to do so. The petition only asked for an election to vote on a proposition and not that the county seat be removed. There can be no difference in law between a petition to locate or relocate a county seat and one to move the county seat: that is, when construed in connection with the two cases cited from Florida. The petition must conform to the law in both cases.

(5) The court evidently was mistaken and erred in saying "In the case at bar the desire to remove the county seat by the signers is apparent." It is very difficult in examining the petition to see where it is apparent. There is not a word in it that expresses a desire or wish to have it removed. It is just as easy to assume that the signers of that petition wished to dispose of the meoded question of the removal of the County seat while they had a majority to retain it at Lincoln as it is to assume that it appears they wanted it to be changed to Carrizozo. If the law provided that bonds of a county should be issued upon a petition of a certain number of persons ask-

ing that the bonds be issued, it not being required that the petition shall ask for the holding of an election, and there being a proposition mooded among the people that it was desirable to issue bonds for a given purpose and that such proposition could not be submitted oft-ner than once in ten years, if in view of said facts there were parties who were in favor of the parties who were opposed to the issue of such bonds, and a petition should be gotten up not asking for the issue of the bonds but asking for an election to vote on the proposition whether the bonds should be issued, could anyone claim that the persons who signed said petition favored the issue of the bonds. Is not it equally consistent with reason that they wanted

the question voted on so they could vote it down, although

38 they might be mistaken as to the legality of their proceedings? It certainly is a stretch of judicial acumen to say that the desire to remove the county seat to Carrizozo by the signers of that petition is apparent. Which words make it apparent? Where is the expression that manifests the desire? Does the desire go any further than asking that an election be held to vote for or against the proposition? And is it not as apparent that the signers of the petition desire to vote against the proposition to the same extent that it is apparent that they desired to vote for it? We insist that this interpretation of the petition is radically wrong.

(6) The court erred and misinterpreted the statute when it says "by the terms of the statute it is impossible to have registration within the time following the petition and the election." The court failed to recognize the fact that it was the duty of the Board to call the election within the time and at a time within which the registration could be had according to law: that it is the policy of the law to have registration of voters at all elections, and that was its requirement and there was no change in that law so far as it applied to special elections; That registration was required and is made necessary to avoid fraud in voting; that it was within the power of the Board to have fixed the election to be held at a distance of two months from the date of the petition. And in construing the statute, it must be construed in connection with the statute on registration, they being in para materia. The principle that both statutes must be construed together and both given force and effect, is laid down in "in the matter of Watts, 1 N. M. 541-2," which held, in substance, that where there are two statutes regulating a certain course to be taken, passed at different times, and each making different requirements necessary, both must be complied with if it was possible to do so. The Territorial Legislature in authorizing that election, if the act was valid, gave time for the registration to be had, and if the

39 election had been called as it should have been, sixty days after the receipt of the petition, both requirements could

have been had. We insist the Board was not authorized or justified in calling the election at a shorter period than sixty days. If the statute had required the election to be held, absolutely, at a period less than sixty days that would have been a repeal of the registration law pro tanto, but the statute did not do so. In the original section 630 Comp. Laws the statute did provide that the election

should be held within six weeks. The amendments changed it to two months. There must have been a reason for that and that reason certainly was for no other purpose than to require them to comply with the registration law. If not, why was the change made? The amendment of the statute says: "At a special election to be called for that purpose at any time within two months from the date of said petition."

The court will notice by reading the amended statute that it does not provide that the election shall be held at any time within two months, but only that it should be called. What is the process of calling a special election? Is it not a mere act or proclamation notifying the people that an election will be held? The time of holding the election or the act of holding the election is no part of the call, but the call is what has to be done prior to holding the election. There is no proposition in the law that the Board shall act immediately on the presentation of the petition; They could do it at any time. If the time of the presentation of the petition was less than a year from the general election they could make the order directing the vote on the proposition. If it was greater than a year, then at any time within sixty days they could call the election, but the statute does not say they must call the election to be held within sixty days. The time of holding the election could have been fixed by them at any time so that they gave time for registration and complying with other election requirements. The language of the

court, that by terms of the statute it is impossible to have revision within the time following the petition and election, is certainly inconsiderate and not according to the fair construction of the statute.

(7) The court erred in holding that the finding of the Court Below as to the original cost of the old building was less than \$30,000.00 was correct, because the evidence shows that all except a few hundred dollars which went into the building, leaving more than \$30,000.00 for the original cost, was in changing or repairing the old building so as to make it suitable for a court house and jail and not simple to take the place of something which formerly existed and had been used as a part of the court house and jail when in use as such. We insist that a revision on that point ought to reach a different conclusion.

(8) The court erred as to the question of the law being special legislation or local legislation on account of the decision in 9 N. M. 565. The court in that case had a different law, which was, the county seat could not be changed to any place unless it had a greater population than that of the one where the county seat existed, and that it must be twenty miles distant. It was sufficient to sustain that case to say that the county seat might be changed and could only be changed to a place having a larger population; that classified the matter sufficiently to make it legal in that case, and that was the turning point in it. The distance in that case was greater than twenty miles, and Raton had a larger population than Springer. But we insist that the reasons given in that case, as to the twenty mile limit, are very unsatisfactory, very perfunctory and are in no

manner sufficient, because there could be no difference as to the effect on the people of the county generally (and that effect to be favorable) whether the place was ten miles or nineteen miles and a half, or twenty miles and a quarter, all such towns must be similarly situated and affected by the same general proposition. There is nothing suggested why there would be any more danger of constant contests over a town nineteen and three quarter miles from the county seat than over twenty miles away. We insist that the statute is special and local and should have been so construed.

41 (9) The court further erred in upholding the law and the order of the court prescribing the form of the ballot. We insist that the form of that ballot was absolutely misleading and did not point out specifically to the voter what proposition he should vote upon, or how he should vote in case he did not want to vote for Carrizozo, and that in view of that fact many voters may have voted for Carrizozo because they saw no other way to vote, and many may have refrained from voting because they saw no way to vote against Carrizozo. Neither the law nor the order makes any proposition to the voter to vote for any other place or to vote directly against Carrizozo; and we say that the court should have held both the law and order void as being incapable of being intelligently acted upon by the voter and as leaving him in doubt as to how he should vote.

In view of the fact that the court was equally divided upon the sufficiency of the petition and the affirmance of the action of the court below did not come from a majority of the court, we request and insist that the court grant a rehearing and allow a re-argument of the case in order that a full bench or at least five Judges may act upon the same and a clear majority of the court be had on the different propositions.

(Sgd.)

GEO. B. BARBER,
T. B. CATRON,
Attorneys for Appellants.

Whish said motion was and is endorsed on the back thereof as follows towit: "No. 1350. In the Supreme Court of the Territory of New Mexico, January Term, A. D., 1910. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor, et al., Appellees, Motion to set aside the Judgment and grant a rehearing. Filed in my Office this Sep. 10, 1910, Jose D. Sena, Clerk. Geo. B. Barber, T. B. Catron, Attorneys for Appellants.

And afterwards, on to-wit at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesday after the first 42 Monday in January A. D., 1911, on the fourth day of the said regular term, the same being Saturday, January 7th, A. D., 1911, the following among other proceedings were had and entered of record as follows towit:

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause coming on before the court on motion of the appellants herein for a rehearing and the court having had said motion under advisement and being now sufficiently advised in the premises grants the same. It is therefore considered and adjudged by the court that the motion for a rehearing herein be and the same hereby is granted.

It is further ordered by the court that this cause be and the same hereby is set for hearing for January 30th, 1911.

And afterwards, on to-wit *on* the Eleventh day of the said Regular term, the same being Monday January 30th, A. D., 1911, the following among other proceedings were had and entered of record, towit:

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause coming on for rehearing upon the transcript of record, assignment of errors and briefs of counsel, is argued by T. B. Catron, Esq., for Appellants and John Y. Hewitt, Esq., for Appellees, and submitted to the court and the court not being sufficient-
43 advised in the premises, takes the same under advisement.

And Afterwards, on towit *on* the sixteenth day of the said Regular term, the same being Saturday February 4th A. D., 1911, the following among other proceedings were had and entered of record towit:-

No. 1350.

S. T. GRAY et al., Appellants,

vs.

ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

This cause having been reargued by counsel and resubmitted to and retaken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the

premises, announces its decision by Associate Justice Parker, Associate Justices Abbott, and Roberts, concurring, and Chief Justice Pope and Associate Justice Wright, Dissenting, adhering to the judgment of the court as heretofore given, affirming the judgment of the court below, for reasons stated in the opinion of the court on file; It is therefore considered and adjudged by the court that the former decision of this court heretofore had and entered is and the same hereby is adhered to and the judgment of the District Court for the County of Lincoln stands as heretofore affirmed.

And Afterwards, on to wit, at the said regular term of the Supreme Court of the Territory of New Mexico on the Seventeenth day thereof, the same being Wednesday March 1st, A. D. 1911, the following among other proceedings were had and entered of record, following to-wit:

44

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

Now comes T. B. Catron, Esq., attorney for appellants in the above entitled cause, and moves the court for a statement of facts herein on appeal to the Supreme Court of the United States, and prays an appeal from the judgment of this Court, to the Supreme Court of the United States. It is therefore considered and adjudged by the court that the appellants herein be and they hereby are granted an appeal from the judgment and decision of this court to the Supreme Court of the United States, upon the filing of a good and sufficient supersedeas Bond.

And Afterwards, on to-wit, on the twentieth day of the said Regular term, the same being March 4th, A. D., 1911 the following among other proceedings were had and entered towit:

No. 1350.

S. T. GRAY et al., Appellants,
vs.
ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

Now comes T. B. Catron, Esq., attorney for appellants herein and having heretofore prayed an appeal to the Supreme Court of the United States moves the court for a supersedeas and to fix the amount of said bond on supersedeas, and the court being sufficiently advised in the premises, fixes the said Bond in the sum of Five thousand dollars, conditioned as required by law.

And afterwards, on towit, on the said Twentieth day of the said regular term, the same being the 4th day of March, there was filed and entered of record a statement of facts by the court in the above entitled cause, on appeal, which said statement of facts by the court were and are in the following words and figures following to wit.

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. BRADY et al., Appellees.

Appeal from District Court, Lincoln County.

On motion of the plaintiffs and appellants, in the above entitled cause, for this court to make a statement of the facts of the case in the matter of a special verdict, this Supreme Court of the Territory of New Mexico makes the following statement of the facts in the above entitled cause in the nature of a special verdict to be used on appeal instead of the evidence at large in the Supreme Court of the United States.

"The original copy of Chapter 80, as printed in the official copy of the laws of the New Mexico Legislature of 1909, is the original council bill No. 86, as it passed both Houses of the Legislature, and contains the original endorsements thereon made by the Chief Clerk of each House of the Legislature, and is in words and figures following, to-wit:

"An Act Relating to Changing of County Seats.

"Be it enacted by the Legislative Assembly of the Territory of New Mexico:—

SECTION 1. That Chapter 119 of the Session Laws of the Legislative assembly for the year 1905, approved March 16th 1905, be, and the same is hereby repealed.

SECTION 2. That Section 630 of the Compiled Laws of the Territory of New Mexico of 1897, be, and the same is, hereby amended so as to read as follows:—

48 SEC. 630. Whenever the citizens of any County in this Territory shall present a petition to the Board of County Commissioners, signed by qualified electors of said County, equal in number to at least one-half of the legal votes cast at the last preceding general election in said County, asking for the removal of the County seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to

a vote of the qualified electors of said County at the next general election, if the same is to occur within one year of the time of the presenting of said petition, otherwise at a special election to be called for that purpose at any time within two months of the date of presenting said petition: Provided: That whenever it is proposed to remove a county seat of any County which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of Thirty Thousand Dollars, (\$30,000) such cost to be ascertained from the records of the Board of County Commissioners of said County, then before said Board of County Commissioners shall make such order so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or the persons interested in the removal of said county seat a deposit of Forty Thousand Dollars in money, which said deposit shall be placed in the Treasury of said County, which said sum of money when so placed in said Treasury shall be used in the construction of a court house and jail in the event that the proposition for the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent of submitting such proposition for the removal of *counties* — which have no court house and jails, the cost to the County of which, as ascertained from the records of said County Commissioners, is less than said sum of Thirty Thousand Dollars (\$30,000.00) as aforesaid; but the same shall be

47 required in all cases when it is proposed to remove a county seat from a point situated on a railroad to another point also so situated; provided further;—, that, the City, town, village or place named in the petition to which it is proposed to remove such county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of said county seat shall cause to be conveyed to said county, by a good and perfect title, in the event that the proposition for the removal shall receive a majority of the votes cast at such election sufficient suitable land to be accepted, if containing as much as three-fourths of an acre for court house, jail and other buildings, for such county, the deed for which shall be filed with and accepted by the Board of County Commissioners before calling said election, which deed to be delivered to the grantor therein named in case said proposition to remove said County seat fails to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village or place situated on a railroad, to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in ten years.

Sec. 3. This act shall be in force and effect from and after its passage, and all acts and parts of acts in conflict herewith are hereby repealed."

"That said Act was introduced in the Legislature in the council thereof on the 17th day of February, 1909, as a bill entitled "An

Act relating to the changing of county seats," and has endorsed thereon the following: in words and figures, to-wit:

"Chap. 80. 38th Legislative Assembly. Council Bill No. 86.

Introduced by Navarro, 17th day of Feb., 1909. An Act entitled an Act Relating to the changing of County seats. Read first time; read second time; ordered printed and referred to committee on Co. and Co. lines. Delivered to translator, ——, 1909. Delivered to printer 2/17/09. Returned by Printer Feb. 23rd, 1909.

48 Reported to Council by Committee on the 24th day of Feb., 1909. With recommendation that it be amended, report and amendments adopted and bill taken up for consideration, read third time preparatory to its passage, placed on its passage and duly passed.

(Sgd.)

WILLIAM F. BROGAN,
Chief Clerk Council.

3/11 Read.

Read third time in preparation to its passage, placed upon its passage and duly passed.

(Sgd.)

E. H. SALAZAR,
Chief Clerk House.

Received from H. as duly passed and properly enrolled and engrossed.

(Sgd.)

WILLIAM F. BROGAN,
Chief Clerk Council.

Com. on Finance.

3/3 Read first and second time by title and referred to the Committee on finance.

Del. to Com. 3/4—

Filed in office of Secretary of New Mexico, Mar. 18th, 1909, 3 P. M.

(Sgd.)

NATHAN FAFFA, *Secretary.*

Compared C. F. K. to J. O."

The printed journals of the Council and House of Representatives of that Legislature showed that the said Bill numbered 86 passed through the said council and the House, as indicated by said endorsements; but they do not show that it was ever enrolled or ever signed by the Speaker of the House or the President of the Council. The original bill Number 86 as it passed the House and Council, being the same document which was used and filed in the office of the Secretary of the Territory, at 3 o'clock P. M. March 18th, 1909, and is the only document filed in said office representing Chapter 80 of the Session Laws of that Legislative Assembly.

The said bill filed as said act does not have the signature or approval of the Governor affixed thereto, nor does it have the signature of the Speaker of the House or the President of the Council affixed or attached thereto.

49 The Council and House of Representatives of the said Legislature of 1909 each adopted rules in regard to the transaction of business before them. These rules were introduced in evidence. Rule 9 of the council provides as follows:

"9. All acts, addresses and joint resolutions shall be signed by the President."

Rule 5 of the House of representatives provides as follows:

"5. The Speaker shall sign all bills passed by the House and certify the passage of all bills that may be passed over the Governor's veto, with the date of the passage."

There is no evidence showing when Council Bill 86 reached the hands of the Governor, but there appears in the journal of the Council of that Legislature a message from the Governor which was received and entered in that journal on the 18th day of March, 1909, in the following words and figures:

"Message No. 51.

TERRITORY OF NEW MEXICO,
OFFICE OF THE EXECUTIVE,
SANTA FE, NEW MEXICO, March 18th, 1909.

Honorable Charles A. Spies, President, and Members of the Council, 38th Legislative Assembly of New Mexico.

GENTLEMEN: I have the honor to inform you that I have this day allowed Council Bill No. 86, 'An Act entitled an act relating to the changing of County seats' to become a law by limitations. I am, gentlemen.

Respectfully yours,
(Sgd.)

GEORGE CURRY,
Governor of New Mexico.

This message is the only evidence that said Council bill No. 86 ever reached the hands of the Governor.

On July 6th, 1909, a petition was presented to the Board of County Commissioners of Lincoln County in the words and figures following, towit:

"County Seat Petition.

To the Honorable Board of County Commissioners of Lincoln County, Territory of New Mexico:

We, the undersigned qualified electors of the County of Lincoln in the Territory of New Mexico, respectfully petition you to call an election and submit to a vote of the qualified electors of said Lincoln

50. County, the proposition to remove the county seat of said Lincoln County, to Carrizozo a town situated on the El Paso & Southwestern Railroad."

Said petition was signed by qualified electors of Lincoln County, equal in number to at least one-half of the legal votes cast at the last

preceding general election in the said county; that solely on and pursuant to said petition and its prayers, and for no other reason, the said Board by a majority thereof made an order on the 7th day of July, 1909, calling an election, as prayed for in said petition, reciting that a proper piece of land in the town of Carrizozo had been conveyed to the said county for said court house, which was accepted, they then by said order provided, in words and figures following:

"Now, therefore, in pursuance of the prayers in said petition and in accordance with the facts so found, and with the statutes in such case made and provided, it is hereby ordered and directed that an election of the qualified electors be held in each of the precincts of said Lincoln County on the 17th day of August, 1909, and at said election the tickets voted shall contain "For County Seat," with the name of the place for which the voter desires to cast his ballot, either printed or written thereon; such ballot shall be canvassed as an election for county officers and the returns of such election shall be certified by the Probate Clerk to the Territorial Secretary, together with a certified copy of the order of the County Commissioners and a sworn certificate of the publication thereof to be filed in the office of the Secretary."

No registration of voters to vote at said election was ordered to be had or had prior to the said election. An election, as provided for by said call, was held on the 17th day of August, 1909, in said county, without any of the voters voting at said election having been registered therefor; at which election a total of 1513 votes were cast 900 being for Carrizozo and 613 for Lincoln, being a majority of 287 votes for Carrizozo. After the declaration of the result of said vote, and election and before the commencement of this suit, said

Board of County Commissioners made an order for the issue
51 and sale of \$28,000 of bonds of the said County of Lincoln
for the purpose of raising money to construct a new court
house at Carrizozo, as the county seat of said county, which were
issued and disposed of at par and the money arising therefrom
placed in the treasury of the county. The said Board of County
Commissioners thereafter and before the commencement of this suit
secured buildings at the said town of Carrizozo which they deemed
convenient, and thereafter the courts of said county, including the
district courts, Probate Courts, and Board of County Commissioners
were held therein. And after the said election and before the com-
mencement of this suit, the said Board of County Commissioners
entered into a contract with the defendant, Ben Betznel, to construct
the said court house and jail for said county at Carrizozo, who imme-
diately entered upon the performance of said contract and has
partially constructed the said court house and jail at Carrizozo, and
the said Board of County Commissioners have paid out to him a
considerable portion of the amount of the contract price for the con-
struction of the said court house and jail, but not all of it. And
that the said Board of County Commissioners gave out and declare
that it is their purpose to go on with the construction of the said
court house and jail and complete the same at Carrizozo and pay the

said Ben Betshel therefor the full amount of his contract price therefor.

The foregoing statement of facts has been agreed upon as a correct statement of facts to be found by the Supreme Court on the motion for special verdict, for use on appeal in the Supreme Court of the United States.

(Sgd.)

GEO. B. BARGER,
T. B. CATRON,

Attorneys for Plaintiffs.

(Sgd.)

HEWITT & HUDSPETH,
Attorneys for Defendants.

52 And Afterwards, on towit, on the 22nd day of April, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a supersedeas Bond which said supersedeas Bond was and is in the following words and figures following to-wit:—

Know all men by these presents, That we, S. T. Gray and Robert Brady, as principals, and The United States Fidelity and Guaranty Company of Baltimore, Md., as their surety, are held and firmly bound unto Robert H. Taylor, Charles W. Wingfield and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson Treasurer and ex-officio Collector of Lincoln county, Territory of New Mexico, and J. G. Riggle, Probate Clerk of said Lincoln County, Territory aforesaid, and Ben Betshol, in the full and just sum of Five Thousand Dollars to be paid to the said Robert H. Taylor, Charles W. Wingfield and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-officio Collector of Lincoln County, Territory of New Mexico and J. G. Riggle, Probate Clerk of said Lincoln County, Territory of New Mexico, and said Ben Betshol, defendants, their successors in office and their heirs, executors and administrators, to which payment well and truly to be made we bind ourselves, our successors, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this fourteenth day of April in the year of our Lord one Thousand nine hundred and eleven.

Whereas, lately at the January term of the Supreme Court of the Territory of New Mexico, in a suit depending in said Court between S. T. Gray and Robert Brady, the plaintiffs therein, and Robert H. Taylor, Charles W. Wingfield, and Romaldo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-officio Collector of Lincoln

53 County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, and Ben Betshol, the defendant therein, judgment was rendered against the said plaintiffs S. T. Gray and Robert Brady, said plaintiffs have obtained and taken an appeal from the said Supreme Court of the Territory of New Mexico to the Supreme Court of the United States to reverse the

judgment in the aforesaid suit, and a citation directed to the said defendants in said suit citing and admonishing them to be and appear in the Supreme Court of the United States, in said cause, sixty days from and after the date of said citation, has been issued and served upon them.

Now the condition of the above obligation is such that if said S. T. Gray and Robert Brady shall prosecute said appeal to effect and recover all damages and costs, if they fail to make good their said judgment and appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

(Sgd.) S. T. GRAY. [SEAL.]
 ROB'T BRADY. [SEAL.]
 THE UNITED STATES FIDELITY
 AND GUARANTY COMPANY, [SEAL.]
 By C. A. BISHOP AND
 A. B. RENEHAN, [SEAL.]
Its Attorneys in Fact. [SEAL.]

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Be it remembered that before me the undersigned authority on this the 14th day of April, A. D., 1911, personally appeared S. T. Gray and Robert Brady, to me known to be the persons described in and who executed the foregoing instrument as principals therein, and they acknowledged that they executed the same as their free act and deed for the uses and purposes therein set forth.

In Witness whereof, I have hereunto set my hand and official seal the day and year last above written in this certificate.

(Sgd.) J. G. RIGGLE,
 [SEAL.] *Probate Court.*

54 TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

On this 19th day of April, A. D., 1911, before me appeared C. A. Bishop and A. B. Renahan, to me personally known, who, being by me duly sworn did say that they are the Attorneys-in-fact of The United States Fidelity and Guaranty Company of Baltimore, State of Maryland, a corporation organized under the laws of the State of Maryland, and doing business by permit under the laws of New Mexico, and that the seal affixed to the above and foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. A. Bishop and A. B. Renahan acknowledged said instrument to be the free act and deed of said corporation.

(Sgd.) THE UNITED STATES FIDELITY AND
 GUARANTY COMPANY,
 By C. A. BISHOP &
 A. B. RENEHAN, *Its Attorney-in-Fact.*

Acknowledged, subscribed and sworn to before me this 19th day of April, A. D., 1911.

(Sgd.)

FRANK J. LEVAN,
Notary Public.

My Commission expires Sept. 19, 1914.

Which said Bond was and is endorsed on the back thereof in the following words and figures towit:—"No. 1350. In the Supreme Court of the Territory of New Mexico. S. T. Gray, et al., Appellants, vs. Board of County Commissioners, Lincoln County, Appellees. Appellant's Bond on appeal to Supreme Court of the United States. 'Examined and approved by me this 21st day of April, 1911. E. R. Wright, District Judge.' T. B. Catron, Santa Fe, New Mexico; Geo. B. Barber, Lincoln, N. M., Attorneys for Appellants. Filed in my office this 22nd day of April, 1911. Jose D. Sena, Clerk."

55 And Heretofore, on to-wit, on the first day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion by the court, which said opinion by the court was and is in the following words and figures following towit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY et al., Plaintiffs,

vs.

ROBERT H. TAYLOR et als., Defendants.

T. B. Catron and Geo. B. Barber, Attorneys for Plaintiffs.
Hewitt & Hudspeth, Attorneys for Appellees.

Opinion of the Court.

PARKER, J.:

This is an equitable action brought by plaintiff's as tax payers of the county of Lincoln, to restrain and enjoin the erection of a court house and jail at Carrizozo in said County, and to enjoin the paying out and expenditure of \$28,000 of money in the treasury of the County, proceeds of bonds issued and sold by the Board of County Commissioners for the purpose of erecting a court house and jail at Carrizozo in said county. The action of the Board of said county was based upon Chapter 80 of the laws of 1909 which was initiated in the legislature of 1909 by Council Bill No. 86. Trial was had in the court below which resulted in a denial of the injunction and dismissal of the bill. Appellants make various complaints of the action of the court below.

1st. Counsel for appellants argues against the validity of the act

because it fails to bear the signatures of the presiding officers of the legislative counsel and house as required by the respective rules of each house, and cites Field v. Clark 143 U. S. 671. In that case the specific question presented was whether the journals of the two houses of congress, which contradicted the terms of the act by showing that a certain section of the act, not appearing in the act had in fact the engrossed bill, signed by the presiding officers of each house and the president, found in the archives of the office of the secretary of state, would control the recitals of the journal. The Court held the latter would control. It held that the journals could not contradict the act but did not hold that they might not be read in aid of the act. Counsel also cites Harwood v. Wentworth 162 U. S. 557 in which case the holding was the same.

But the question in this case is whether the journals may be resorted to in aid of the act in order to show that it in fact passed both houses. There is no legislative requirement that any bill shall receive the signature of the respective presiding officers of the two houses. The only requirement is found in a rule adopted separately by each house. The journals of the two houses show the passage of the bill and in such case they may be judicially noticed in aid of the act. McDonald v. State, 80 Wis. 407, Gardner v. Collector, 6 Wall. 499, 7 Ency. Ev. 991, n/18.

Objection to the validity of the act is made on account of the absence of the signature of the Governor and certificate by him of the date when he received the same. The statutory requirement in this regard is found in Sec. 1842, U. S. R. S. which provides:

"That 'Every bill which has passed the Legislative Assembly of any Territory shall, before it becomes a law, be presented to the Governor; if he approves he shall sign it; but if not, he shall return it, with his objections, * * *. If any bill is not returned by the Governor within three days, Sundays excluded, after it has been presented to him the same shall be a law in like manner as if he had signed it, unless the legislative assembly by adjournment sine die prevent its return, in which case it shall not be a law.'

It appears from the journals that the act was passed many days before March 18, the last day of the session and the day upon which the governor sent a message to the legislature stating that he had allowed the act to become law by limitation. We have examined the original engrossed bills on file in the office of the secretary of the Territory and find that this was the uniform practice of the governor in regard to acts allowed to become laws by limitation, and on none of them does he show the date of receipt of the act by him. In the absence of any evidence to the contrary we are compelled to assume that the executive acted lawfully and his message will be assumed to imply the receipt by him of the act more than three days prior to the message.

2nd. The contention is made that the petition for the election was not in accordance with the act and that, consequently, the county commissioners had no power to call the election.

The act provides:

"Sec. 2. That Sec. 630 of the Compiled Laws of the Territory of

New Mexico, of 1897; be, and the same is hereby amended so as to read as follows:

'Sec. 630. Whenever the citizens of any county in this Territory shall present a petition to the Board of County Commissioners signed by qualified electors of said county, equal in number to at least one half of the legal votes cast at the last preceding general election in said county, asking for the removal of the county seat of said county, to some other designated place, which petition shall be duly recorded in the records of said county, and said board shall make an order directing that the proposition to remove the county seat to the place named in the petition, be submitted to a vote of the qualified electors of said county at the next general election, if the same is to occur within one year of the time of presenting said petition: Provided, That whenever it is proposed to remove a county seat of any county which has public buildings consisting of a court house and jail, the original construction of which cost said county more than the sum of thirty-thousand (\$30,000) dollars such cost to be ascertained from the records of the Board of County Commissioners of said county, then before said Board of Commissioners shall make
58 such order so submitting such proposition to remove the county seat, to the qualified voters of said county, shall require from the petitioners or the persons interested in the removal of said county seat a deposit of forty thousand dollars (\$40,000) in money, which said deposit shall be placed in the treasury of said county, which said sum of money when so placed in said treasury shall be used in the construction of a court house and jail in the event that the proposition of the removal shall receive a majority of the votes cast at such election, but such deposit shall not be required as a condition precedent to submitting such proposition for the removal of the counties which have no court house and jails, the cost to the county of which, as ascertained from the records of said county commissioners is less than the said sum of thirty thousand dollars (\$30,00.00) as aforesaid; but the same shall be required in all cases when it is proposed to remove a county seat from a point situated on a railroad to another point also so situated: Provided, further, That the citym town, village or place named in the petition to which it is proposed to remove said county seat shall be at least twenty miles distant from the then county seat of said county and said petitioners or persons interested in the removal of the said county seat shall cause to be conveyed to said county by a good and perfect title, in the event of the proposition for the removal shall receive a majority of the votes cast at such election, sufficient suitable land to be accepted if containing as much as three fourths of an acre for court house, jail and other buildings for such county, the deed for which shall be filed with and accepted by the Board of County Commissioners before calling said election which deed to be re-delivered to the grantor therein named in case said proposition to remove said county seat fail to receive a majority of the votes cast at such election, and that no proposition to remove a county seat from a city, town, village or place, situated on a railroad, to one not so situated shall be

entertained or voted upon, and that no vote shall be ordered on substantially the same proposition more than once in three years."

59 The petition presented to the Board of County Commissioners in this case was as follows:

"County Seat Petition."

To the Honorable Board of County Commissioners of Lincoln County, Territory of New Mexico:

We, the undersigned, qualified electors of the county of Lincoln, in the Territory of New Mexico, respectfully petition you to call an election and submit to a vote of the qualified electors of said Lincoln County, the proposition to remove the county seat of said Lincoln County to Carrizozo, a town situated on the El Paso and Southwestern Railroad."

Counsel urges that this petition does not meet the requirements of the statute. He says that this was not a petition to remove the county seat to Carrizozo, but we are unable to agree with the conclusion urged. The proposition was not to submit the question of locating the county seat generally thus calling for signatures of persons who were opposed to as well as in favor of the removal. It presents the specific proposition to remove the county seat to Carrizozo. Thus no signer to the petition, and they were large in excess of the required number, could have been deceived by the petition. Counsel cites Lanier v. Padgett, 18 Fla., 842, and McKinney, v. Meyers 26 Fla. 267. In the first case the statute provided for a petition praying for a change. The petition in that case was "for the purpose of legally locating the court house." The court held properly that the petition was fatally defective because signers might easily have been secured to such a petition who really favored the retention of the county seat at its then location. In the second case the facts were similar and the same decision reached. In this latter case, however, the court uses the significant expression: "If there was in the petition any prayer, or expression of desire, for a change of location of the county site, the bill does not inform us of it." In the case at Bar the desire to remove the county seat by the signers is apparent.

We therefore hold that the petition was sufficient.

60 3rd. Objection is made to the election held at which a large majority of the people of the county determined that the county seat should be located at Carrizozo, on the ground that there was no registration of the voters. By the terms of the statute it is impossible to have registration within the time following the petition and the election. This alone disposes of the contention.

4th. The next contention is that there were frauds in the election but as found by the court below, there was only one illegal vote cast and that was in favor of Lincoln.

5th. The act requires that when public buildings at the old county seat cost by way of original construction \$30,000, the petitioners for the new county seat must deposit \$40,000 in money for the erection of the new county buildings. The court below found that the orig-

inal cost of the old buildings was less than \$30,000 and, as we think, correctly held that subsequent repairs should not be counted.

6th. Counsel urges that the law in question is local and special and that no town within twenty miles of a county seat can ever be a county seat no matter what its qualifications may be. Without reviewing the cases cited it is sufficient to say that this case was well considered in *Dodlin v. Kohlhausen* 9 M. M. 565 and the act was held not to be special or local by reason of the twenty mile limitation. We see no reason to depart from the holding in that case.

7th. Counsel for appellants complains that the ballots submitted to the people at the election were misleading and not in accordance with the requirements of the provision of Sec. 630 above quoted, which requires that the Board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county. The ballot provided for in the order was "for County Seat —"

and was in exact accordance with the terms of section 631
61 C. L., 1897. We see no reason why this ballot was calculated
to deceive the voter and there is no evidence that the voters
were thereby deceived.

8th. The Point is not raised in this case as to whether this is not a collateral attack upon the location of the county seat. Quere, whether this cause should not be affirmed upon the doctrine announced in *Torres vs. Board of County Commissioners* decided at this term.

For the reasons stated the judgment of the lower court will be affirmed, and it is so ordered.

(Sgd.)

FRANK W. PARKER,
Associate Justice.

We Concur:

IRA A. ABBOTT, A. J.

Chief Justice Pope and Associate Justice Wright, concur specially and file separate opinion.

Associate Justice Mechem having tried the cause below and Associate Justice McFie not having heard the argument did not participate in this decision.

And afterwards on towit, on the first day of September, there was wiled in the office of the Clerk of the Supreme Court of the Territory of New Mexico an Opinion concurring specially in the above opinion in the above entitled cause which said opinion was and is in the following words and figures following to wit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1350.

S. T. GRAY and ROBERT BRADY, Appellants,
vs.

ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

POPE, C. J. (concurring specially) :

62 While agreeing with most of the opinion, I do not concur in the conclusion announced in the second paragraph. I am of the opinion that the form of the petition for the election did not comply with the terms of the statute. The latter clearly requires that the petitioners must ask for the removal of the county seat to some other designated place. The petition to my mind asks simply for a vote on the proposition to change. A person opposing Carrizozo but desiring an election simply to settle the question between Carrizozo and Lincoln once for all, might with perfect consistency have signed the petition. Such a petition does not comply with the law and is not a valid initiation of the proceedings for an election. I concur, however in the result upon the ground that the case is within the holding of the case this day announced in Torres vs. Board of County Commissioners, that where the proceeding is practically an attempt to settle a county seat controversy the exclusive method is quo warranto. I am authorized to say that Mr. Justice Wright concurs in these views.

(Sgd.)

WILLIAM H. POPE,
Chief Justice.

And Afterwards on the 4th day of February A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion on the rehearing of the above entitled cause, which said opinion of the court on the rehearing in the above entitled cause, was and is in the following words and figures following towit:

63 In the Supreme Court of the Territory of New Mexico,
January Term, A. D. 1911.

No. 1350.

S. T. GRAY et al., Appellants,

vs.

ROBERT H. TAYLOR et al., Appellees.

Appeal from District Court, Lincoln County.

On Rehearing.

This case was decided at the last term by a divided court. A rehearing was had at the present term and the cause resubmitted to all

of the Justices qualified to sit in the case, including Associate Justice Roberts who has since the former hearing come upon the bench.

In the former opinion a quere was thrown out by the court as to whether the procedure by injunction was proper in cases of this kind and calling attention to the case of Torres vs. Board of County Commissioners decided at the last term. In the argument on rehearing counsel on both sides admit that injunction is a proper remedy in a case of this kind, and for that reason the court withdraws the intimation contained in the former opinion and assumes for the purposes of this case, that the procedure is proper.

In the former decision the court divided upon the question as to whether the petition for the election was in accordance with the act under which the county commissioners assumed to proceed. Upon this rehearing the court had carefully re-examined the question and finds no reason to recede from its former position.

All of the other questions in the case were fully examined in a former opinion and have been re-examined by the court on this rehearing and the court adheres to its former decision.

FRANK W. PARKER,
Associate Justice.

We Concur:

IRA A. ABBOTT, *A. J.*
CLARENCE J. ROBERTS, *A. J.*

We Dissent:

WILLIAM H. POPE, *C. J.*
EDWARD R. WRIGHT, *A. J.*

Associate Justice Mecham, having tried the case below, McFie not having heard the argument, did not participate in this decision.

64 TERRITORY OF NEW MEXICO,
Supreme Court:

I, Jose D. Sena, Clerk of the Supreme Court of the Territory of New Mexico, do hereby certify that the above and foregoing is a full true and complete copy of the transcript of record, pleadings and opinion in the above entitled cause, as the same appear on file and of record in my office which is hereby transcribed to the Supreme Court of the United States in accordance with an appeal duly prayed and granted.

Witness my hand and the seal of the Supreme Court of the Territory of New Mexico this the 26th day of May A. D., 1911.

[Seal Supreme Court, Territory of New Mexico.]

JOSE D. SENA,
Clerk Supreme Court of N. M.

65 United States of America to Robert H. Taylor, Charles W. Wingfield, and Roumaldo Duran, the Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Rigle, Probate Clerk of Lincoln County, Territory of New Mexico, and Ben Betzel, Defendants, Greeting:

You are hereby commanded and admonished to be and appear in the Supreme Court of the United States, sixty days from and after the date of this citation, pursuant to an appeal duly prayed for and granted by the Supreme Court of the Territory of New Mexico, wherein S. T. Gray, and Robert Brady, were appellants, and you were appellees, to show cause, if any there be, why the judgment and decree rendered against the said S. T. Gray and Robert Brady appellants as by said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this the 9th day of March, A. D., 1911.

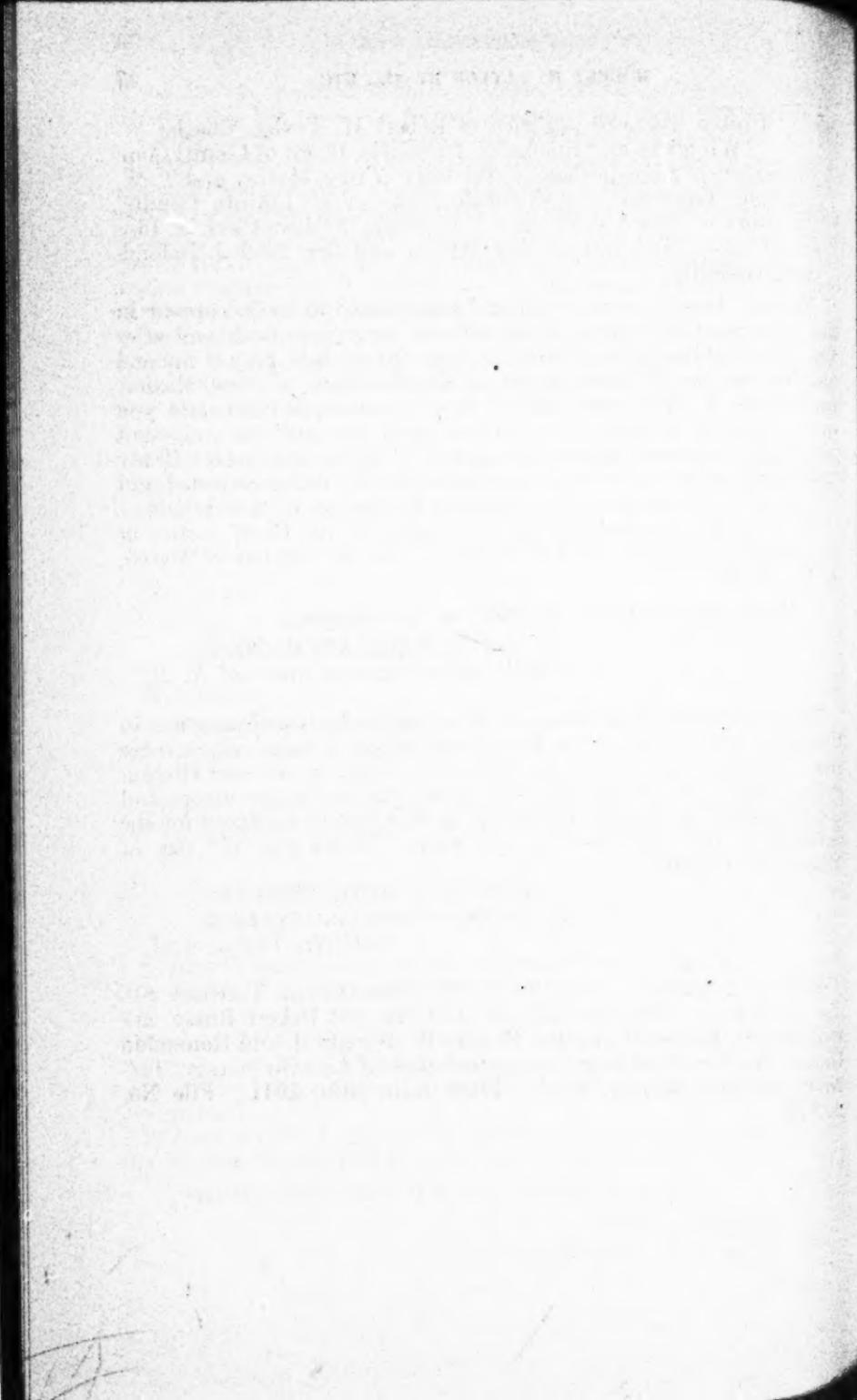
[Seal Supreme Court, Territory of New Mexico.]

WILLIAM H. POPE,
Chief Justice Supreme Court of N. M.

We, the undersigned attorneys for the defendants and appellees in the cause mentioned in the foregoing citation, hereby acknowledge that we have received this day service of a copy of the said citation above set out which was delivered to us, and we hereby accept and acknowledge due service thereon on us this date as attorneys for the defendants and appellants in said cause. Dated this 17th day of March, A. D. 1911.

HEWITT & HUDSPETH,
Attorneys for Defendants and Appellees,
Rob't H. Taylor et al.

Endorsed on cover: File No. 22,729. New Mexico Territory Supreme Court. Term No. 653. S. T. Gray and Robert Brady, appellants, vs. Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, the board of county commissioners of Lincoln county, Territory of New Mexico, et al. Filed June 10th, 1911. File No. 22,729.



In the Supreme Court of the United States of America.

No. 653.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMALDO Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, and T. W. Watson, Treasurer and ex-Officio Collector of Lincoln County, Territory of New Mexico, and J. G. Riggle, Probate Clerk of Lincoln County, and Ben Betznel, Appellees.

Appeal from Supreme Court of New Mexico.

Assignment of Errors.

1. The Court erred in not finding that council bill No. 86 had not been legally enacted.
2. In not finding that the alleged election for a change of the county seat had not been legally held.
3. In not finding that the alleged chapter 80 of the Laws of 1909, even if it had been legally enacted, was either a special or a local law in contravention of the United States Statutes enacted July 30th, 1886, and contained in the first section of Chapter DCCCXVIII of the Statutes at Large, sometimes called the Springer Act, and was therefore null and void.
4. In not finding that there was no evidence that council bill No. 86, which was used in its original shape as the original of chapter 80 of the Laws of 1909 of the New Mexico legislature, had ever been signed by the Speaker of the House and President of the Council of the Legislative Assembly of New Mexico, and therefore had not become a law.
5. In not finding that council bill No. 86, which was used as the original of Chapter 80 of the Laws of 1909 of the New Mexico legislature, never became a law, it never having been approved by the governor.
6. In not finding that there was no evidence that said council bill No. 86, which was used as the original of Chapter 80 of the Laws of 1909 of the New Mexico Legislature, was presented to the governor three full days before that session of the legislature adjourned, and not being signed or approved by the governor became a law without his signature.
7. The Court erred in not finding that there never was any petition signed by a number of qualified voters of Lincoln County, New Mexico, equal to one half of the votes cast at the last preceding general election asking that the county seat of Lincoln County be changed to Carrizozo, and therefore that the said election was illegal and void.

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8. The Court erred in not finding that the petition acted upon by the Board of County Commissioners in regard to the said election for a change of the county seat of Lincoln County was not in the terms provided by law nor was it according to the provisions of the law.

9. The Court erred in not finding that the petition which was presented to the board was not such a petition as the law provided should be made in a case of an application to change a county seat, but was different therefrom; and in addition thereto, was calculated to mislead and deceive the signers thereof.

10. The Court erred in not finding that the election in question was void for want of any registration of the names of the legal voters and because said election was held without any registration of the legal voters of said county, as required by law.

11. The Court erred in rendering judgment in favor of the defendants and against the plaintiffs.

12. The court erred in affirming the judgment in favor of the defendants and not rendering judgment in favor of plaintiffs, and in not reversing the judgment of the court below.

13. The Court erred in divers and sundry other respects, as will appear from an inspection of the record and proceedings in said cause.

Wherefore, plaintiffs pray that the judgment and decree of the Supreme Court of New Mexico be reversed in all things, and said cause remanded for proper judgment.

[Endorsed:] 653/22729. 1350. Appeal to the Supreme Court of the United States, from the Supreme Court of the Territory of New Mexico. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, The Board of County Commissioners, Lincoln County, Territory of New Mexico, et al., Appellees. Assignment of errors. Filed in my office this May 26, 1911. José D. Sena, Clerk.

[Endorsed:] File No. 22,729. Supreme Court U. S., October Term, 1911. Term No. 653. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor et al., etc. Assignment of Errors. Filed November 29, 1911.

S. T. GRAY and ROBERT BRADY, Appellants,

vs.

ROBERT H. TAYLOR, CHARLES W. WINGFIELD, and ROMUALDO Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, et al., Appellees.

Appeal to the Supreme Court of the United States from the Supreme Court of the Territory of New Mexico.

TERRITORY OF NEW MEXICO,
County of Santa Fe:

Thomas B. Catron, being duly sworn upon his oath says: that he is one of the attorneys of counsel for the appellants in the above anti-

said cause; that he is fully conversant with and knows all the facts involved in the matters in dispute in the said cause; that the said suit as commenced in the District Court for the County of Lincoln, Territory of New Mexico, and prosecuted to final judgment therein, and in the Supreme Court of the Territory of New Mexico, involves the right of the Board of County Commissioners of the County of Lincoln, defendants in said cause, to expend the moneys of the County of Lincoln for the purpose of erecting a court house and jail at Carrizozo, in said county; that contracts have been made with the defendant, Ben Betznel, to pay him \$28,000 for the erection and completion of said court house and jail and matters incidental thereto; that the sum of \$28,000 was raised and covered into the Treasury of said County by said Board of County Commissioners by the sale of bonds in said county to that amount, and there is still on hand and unexpended that amount thereof on the said court house and jail depending upon the litigation involved in this cause the sum of not less than \$15,000 which will be expended under said contracts for the erection of said court house and jail in case the above entitled cause should be determined against the appellants and in favor of the said appellees; that the right to expend said \$15,000 is dependent upon the result of this suit, and the amount so in controversy in this suit exceeds the sum of \$5,000 exclusive of interest and costs.

THOMAS B. CATRON.

Subscribed and sworn to before me this March 2nd, A. D. 1911.
My commission expires October 10, 1911.

[Seal of Tempe Willison, Notary Public, Santa Fe County.]

TEMPE WILLISON,
Notary Public.

[Endorsed:] 653/22729. 1350. Appeal to the Supreme Court of the United States from the Supreme Court of the Territory of New Mexico. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor, Charles W. Wingfield, and Romualdo Duran, The Board of County Commissioners of Lincoln County, Territory of New Mexico, et al., Appellees. Affidavit that the amount in controversy exceeds \$5,000.00. Filed in my office, this May 26, 1911. José D. Sena, Clerk.

[Endorsed:] File No. 22,729. Supreme Court U. S., October Term, 1911. Term No. 653. S. T. Gray and Robert Brady, Appellants, vs. Robert H. Taylor et al., etc. Affidavit of value. Filed November 29, 1911.